



June 04, 2020

Chairperson Joanne Deneron
Mackenzie Valley Environmental Impact Review Board
5102 – 50th Avenue
P.O. BOX 938
YELLOWKNIFE NT X1A 2N7

Dear Ms. Deneron:

**Responsible Ministers' Adopt the
Review Board's Recommendation for the Environmental Assessment
for Diavik Diamond Mines Inc.'s Kimberlite Deposit Proposal [EA1819-01]**

Recommendation adopted

As the delegated Minister under the *Mackenzie Valley Resource Management Act (the Act)* and on behalf of the other responsible ministers, I am writing to convey our final decision for Diavik Diamond Mines Inc.'s (Diavik) proposal to store processed kimberlite in pits and underground (the Project). Our decision is adoption of the Mackenzie Valley Environmental Impact Review Board's (Review Board) January 6, 2020 recommendation. In the Review Board's *Report of Environmental Assessment and Reasons for Decision (REA)*, the Review Board recommended, pursuant to subparagraph 128(1) (b) (i) of *the Act*, that the Project be approved subject to the implementation of six measures and Diavik's commitments as recorded in the REA. These measures and commitments are to prevent significant adverse effects on the cultural use of Lac de Gras, including cumulative impacts.

Consideration of potential adverse effects to Aboriginal and Treaty Rights

To satisfy their Aboriginal consultation responsibilities, responsible ministers from the Government of the Northwest Territories (GNWT) and the Government of Canada (GoC) consulted with Indigenous governments and organizations (IGOs) potentially affected by the Project. The IGOs were asked whether the REA addressed the potential adverse effects of the proposed Project on their asserted or established Aboriginal and/or Treaty rights. The GNWT and GoC consulted with the Akaitcho Dene First Nations (including: Yellowknives Dene First Nation, Łutselk'e Dene First Nation, and Denínu Kúé First Nation), North Slave Métis Alliance, Northwest Territory Métis Nation (including: Fort Resolution Métis Government, Fort Smith Métis Council, and Hay River Métis Government Council), Tłı̨chǫ Government and Kitikmeot Inuit Association (KIA). The GNWT also consulted the Mountain Island Métis.

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In total, eight IGOs responded to the consultation letters; the issues raised were primarily related to water quality; consultation and engagement; the Bathurst caribou herd; potential adverse effects to the cultural use of the Lac de Gras; and, a lack of funding for regulatory processes. Following a full analysis of the responses received from the IGOs, responsible ministers found that the REA issued by the Review Board addressed all but one concern raised. The KIA noted in their response that they were not included in Measure 2. However, the responsible ministers believe this concern was later addressed by Diavik in a February 27, 2020 letter that said they would engage with KIA “during all subsequent stages/phases of project development,” which includes Measure 2.

The responsible ministers gave full and fair consideration to the views expressed by the IGOs, the Review Board, and all other parties during the environmental assessment and in all correspondence post-release of the REA. Responsible ministers have concluded that all points raised relating to potential adverse effects from the proposed Project on asserted or established Aboriginal and/or Treaty rights have been meaningfully consulted on and will be adequately accommodated, as appropriate, through the implementation of the measures and Diavik’s commitments.

Consideration of new information (s.130(3) of the Act)

The responsible ministers’ collective final decision was made after careful consideration of:

- the January 6, 2020, *Report of Environmental Assessment and Reasons for Decision for EA1819-01*, including measures and developer’s commitments (PR#196);
- comments made by parties to the environmental assessment at the January 17, 2020, Review Board meeting (presentation of findings and measures by the Review Board staff; PR#205);
- the January 29, 2020 letter from Kitikmeot Inuit Association (PR#207);
- the February 7, 2020 letter from North Slave Métis Alliance (PR#208);
- the February 7, 2020 letter from the Tłıchǫ Government (PR#210);
- the February 7, 2020 letter from Yellowknives Dene First Nation (PR#209);
- the February 7, 2020 letter from Denínu Kúé First Nation (PR#211);
- the February 15, 2020 letter from Northwest Territory Métis Nation (PR#212);
- the February 19, 2020 letter from Łutselk’e Dene First Nation (PR#213);
- the February 27, 2020 letter from Fort Resolution Métis Government (PR#215);
- the February 27, 2020 letter from Diavik (PR#214); and,
- Diavik’s updated engagement record (PR#206).

The public registry (PR) number for each of these items has been included for reference.

Overall analysis of the REA, measures, and IGO input

The responsible ministers completed a fulsome analysis of the Review Board's recommendation (including the measures) in addition to considering new evidence (such as the responses from IGOs and Diavik). Responsible ministers have decided to adopt the recommendation of the Review Board. To provide clarity on the responsible ministers' understanding of the measures, an analysis has been attached for your reference.

Conclusion of responsible ministers

Pursuant to sub-paragraph 130(1)(b)(i) of *the Act*, the responsible ministers have agreed to adopt the recommendation of the Review Board as worded. The responsible ministers also noted the Review Board's suggestions and follow-up program in the REA. We encourage the Wek'èezhì Land and Water Board, Diavik, and IGOs, as applicable, to give due consideration to these suggestions and the follow-up program as the GNWT and GoC commit to doing the same.

I confirm that in making this decision, the responsible ministers have considered the importance of the conservation of the lands, waters, and wildlife in the Mackenzie Valley on which the Project might have an effect, as required under s. 131.2 of *the Act*. The well-being of communities was also considered.

Responsible ministers that contributed to the decision

For certainty, the other responsible ministers for this decision are the territorial ministers of Environment and Natural Resources; and Industry, Tourism and Investment; and the federal Minister of Fisheries, Oceans and the Canadian Coast Guard (whose decision is consolidated by the Minister of Northern Affairs). All responsible ministers have jurisdiction in relation to the Project.

Next steps for the Project

The implementation of the measures and commitments will be further discussed in detail during the Wek'èezhì Land and Water Board water licensing amendment process. Joint-GNWT and GoC letters are being sent to IGOs encouraging their participation in regulatory and other processes. Responsible ministers note that consultation, engagement, and accommodation with respect to potential effects of the Project on asserted or established Aboriginal and/or Treaty rights does not end with the decision to adopt the Review Board's recommendation.

The above noted regulatory and other processes associated with the Project will allow for IGOs to offer input to help ensure the potential adverse effects to asserted or established Aboriginal and/or Treaty rights from the Project are addressed.

I wish to thank the Review Board for effectively and efficiently discharging its duties under *the Act* in this matter.

Sincerely,



Shane Thompson
Minister
Lands

Attachment

- c. Honourable Shane Thompson
Minister
Environment and Natural Resources

- Honourable Katrina Nokleby
Minister
Industry, Tourism and Investment

- Honourable Daniel Vandal
Minister
Northern Affairs

- Honourable Bernadette Jordan
Minister
Fisheries, Oceans and Canadian Coast Guard

- Chief Louis Balsillie and Band Council
Denínu Kúé First Nation

- President Lloyd Cardinal
Fort Resolution Métis Government

- President Allan Heron
Fort Smith Métis Council

President Trevor Beck
Hay River Métis Government Council

President Stanley Anablak
Kitikmeot Inuit Association

Chief Darryl Marlowe and Band Council
Łutselk'e Dene First Nation

President Clem Paul
Mountain Island Métis

President William Enge
North Slave Métis Alliance

President Garry Bailey
Northwest Territory Métis Nation

Grand Chief George Mackenzie
Tłı̨chǫ Government

Chief Edward Sangris and Band Council
Yellowknives Dene First Nation (Detah)

Chief Ernest Betsina and Band Council
Yellowknives Dene First Nation (Ndlı̨)

Ms. Shaleen Woodward
Principal Secretary

Mr. Martin Goldney
Secretary to Cabinet/Deputy Minister
Executive and Indigenous Affairs

Ms. Shawn McCann
A/Deputy Secretary, Indigenous and Intergovernmental Affairs
Executive and Indigenous Affairs

Ms. Sylvia Haener
Deputy Minister
Lands

Dr. Erin Kelly, Ph.D.
Deputy Minister
Environment and Natural Resources

Ms. Pamela Strand
Deputy Minister
Industry, Tourism and Investment

Chairperson Joseph Mackenzie
Wek'èezhì Land and Water Board

Mr. Mark Cliffe-Phillips
Executive Director
Mackenzie Valley Environmental Impact Review Board

Chairperson Charlie Catholique
Environmental Monitoring Advisory Board

Mr. Sean Sinclair
Principal Advisor
Environment and Closure Readiness
Diavik Diamond Mines Inc.

Ms. Ethel Liske
ADFN Negotiations Coordinator
Akaitcho Dene First Nation

Ms. Annie Boucher
Executive Director
Akaitcho Territory Government

Ms. Carol Ann Chaplin
Senior Administrative Officer
Denínu Kúé First Nation

Ms. Bev Heron
Secretary
Fort Smith Métis Council

Ms. Linda Piwowar
Finance Manager
Hay River Métis Government Council

Ms. Iris Catholique
Executive Director
Łutselk'e Dene First Nation

Mr. Mark Whitford
Vice President
North Slave Métis Alliance

Ms. Ursula Vogt
Executive Director
Northwest Territory Métis Nation

Ms. Laura Duncan
Tłıchł Executive Officer
Tłıchł Government

Mr. Jason Snaggs
Chief Executive Officer
Yellowknives Dene First Nation (Detah/Ndilł)

Responsible Ministers' Discussion of the Measures within the Review Board's Report of Environmental Assessment

Acceptable use of "land use permit" in Measure 1

Responsible ministers are aware that Diavik's current site activities are captured under grandfathered land leases administered by the Department of Lands. Diavik does not currently hold land use permits. However, responsible ministers agree that the reference to "land use permit" is acceptable in Measure 1. Responsible ministers see the term as being used generally by the Review Board.

Including KIA in Measure 2 activities

Responsible ministers agree with the intent of Measure 2: that Diavik will collaboratively develop, with IGOs, criteria for determining if water in the pit lake(s) is acceptable for cultural use. However, responsible ministers believe it was an oversight of the Review Board to exclude KIA from participating in this measure. KIA has been involved with the Diavik Diamond Mine for many years. This includes the Environmental Agreement, Socio-Economic Monitoring Agreement, and a Participation Agreement with Diavik. As well, KIA was included in Measures 5 (increased engagement) and 6 (adaptive management of cultural impacts). Responsible ministers therefore believe KIA should have the opportunity to develop water quality criteria by participating in Measure 2, which would mitigate their potential adverse effects on their cultural use of the Lac de Gras area. This rationale was further supported by KIA's response to the REA, specifically their noted desire to be included in Measure 2.

While responsible ministers considered modifying the measure so that KIA would explicitly be included, responsible ministers believe that approach was not necessary after receiving Diavik's February 27, 2020 letter. In that letter, Diavik clarified that it intends to meaningfully engage with KIA "during all subsequent stages/phases of project development" which includes the components of Measure 2. Responsible ministers therefore understand that Diavik commits to include KIA in any and all Measure 2 activities.

Interpretation of Measure 6 and GNWT's outline of its implementation plan

Responsible ministers took considerable time analyzing Measure 6, which was directed at the GNWT, primarily because the measure was inconsistent in its inclusion of KIA. The analysis was also to ensure that Measure 6 could be effectively implemented and that any potential significant cumulative adverse impacts of the Project on any potentially affected Indigenous community could be effectively mitigated. One key focus was how the GNWT would ensure KIA's potential cumulative cultural impacts were mitigated while not exceeding the GNWT's jurisdictional authority.

Firstly, under section 130(5) of the Act, it states that "a first nation, local government, regulatory authority or department or agency of the federal or territorial government

affected by a decision made under this section shall act in conformity with the decision to the extent of their respective authorities.” Responsible ministers interpret s. 130(5) to mean that while the measure mentioned programming, the GNWT can only provide programming within the Northwest Territories.

The GNWT interprets the measure as having three primary components to adaptively manage adverse impacts on cultural well-being from the Project: (1) Indigenous communities will develop cultural well-being indicators with the help of the GNWT; (2) the GNWT will meet with Indigenous communities to engage in discussions and share information; and, (3) the GNWT will provide annual reporting. In order to develop cultural well-being indicators to monitor and evaluate cultural well-being impacts associated with the Project, the GNWT intends to facilitate a workshop with the potentially affected Indigenous communities. The GNWT will invite KIA to participate in this workshop. After establishing a list of indicators, the GNWT will host a meeting with the same Indigenous communities so that an agreed upon list of potential priority cultural well-being impacts can be determined. This meeting may be held in conjunction with the workshop. While individual communities may suggest different cultural well-being indicators, based on the overall comments and concerns during the environmental assessment, the GNWT expects that there will be similarities so that the communities and the GNWT will be able to agree to a common list of potential priority impacts. The GNWT will then be able to monitor and adaptively manage adverse impacts on cultural well-being from the Project within the Northwest Territories and report to the Indigenous communities. Annual meetings will also allow participants with identified cultural well-being indicators to discuss how effective GNWT programs within the Northwest Territories (or other programs) are at addressing the list of potential priority impacts. Participants will also discuss if there are any possible improvements to GNWT programs within the Northwest Territories and the GNWT will advise if there are new programs within the Northwest Territories or other forms of support available. Implementation of this measure will be led by the GNWT’s Department of Industry, Tourism and Investment.